

Service Date: May 12, 1999

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF)	UTILITY DIVISION
Lincoln Telephone Company's)	
Implementation of 1+ IntraLATA Dialing)	DOCKET NO. D98.10.226
Parity.)	ORDER NO. 6168

FINAL ORDER

INTRODUCTION AND PROCEDURAL BACKGROUND

1. On January 25, 1999, Lincoln Telephone Company (Lincoln) filed its Application for Approval of its IntraLATA Equal Access Implementation Plan (Plan) with the Montana Public Service Commission (Commission). Lincoln requests approval of the procedures and process it intends to use to implement 1+ intraLATA toll dialing parity.
2. Lincoln filed its Plan in response to AT&T Communications of the Mountain States Inc. bone fide request (BFR) dated October 2, 1998 and received by Lincoln four days later.
3. On April 16, 1998, the Commission adopted rules governing local exchange carriers' (LEC) implementation of intraLATA dialing parity in Montana. 1998 Mont. Admin. Reg., No. 7, at 983-1003 (April 16, 1998) (the "dialing parity rules" or "rules"). These rules provide the procedures and requirements for Incumbent LECs' dialing parity implementation. *See* ARM 38.5.4101 through 38.5.4120.

4. ARM 38.5.4120 requires Lincoln to implement intraLATA dialing parity pursuant to a Commission-approved plan. Lincoln states that its Plan conforms to Commission rule.

5. On October 20, 1998, Lincoln acknowledged receipt of AT&T's BFR in a letter to the Commission. Lincoln's letter requested that they be given thirty (30) days to "ascertain if implementation of 2-PIC is technically feasible and/or economically burdensome." Further, Lincoln asserted that if implementation was later determined not to be economically burdensome or technically infeasible they would implement equal access within the timeframe established by the Commission.

6. In a follow-up December 7, 1998 letter to the Commission, Lincoln claimed that 1+ equal access implementation would be economically burdensome and technically infeasible because of an estimated revenue loss due to conversion. Subsequently, the Commission issued a notice requesting comments from interested parties by December 30, 1998 pursuant to ARM 38.5.4120(1) which allows interested parties a reasonable opportunity to comment on a LECs Plan.

7. On December 21, 1998 AT&T filed A Petition For Leave to Intervene followed by a December 28, 1998 Motion to Establish a Procedural Schedule and Request for Hearing. AT&T's petition and motion requested that the Commission require Lincoln to file additional materials which demonstrates implementation of intraLATA equal access would be technically infeasible and/or economically burdensome. AT&T further requested that the Commission set the matter for hearing and establish a procedural schedule.

8. Lincoln later determined that implementation would not be economically burdensome or technically infeasible. On January 20, 1999, the Commission required Lincoln to file its Plan by January 25, 1999.

Motion for Partial Waiver

9. As stated above, Lincoln has delayed filing its Plan pending a review of its ability to implement intraLATA equal access. However, Lincoln's Plan calls for implementation approximately nine months rather than the required six months after receipt of AT&T's October 6, 1999 BFR. The Commission granted Lincoln's request to waive ARM 38.5.4103(2)(a).

10. On March 23, 1999, the Commission approved Lincoln's Plan with minor modifications. However, concomitantly with that decision, the Federal Communications Commission (FCC) issued an order modifying the dates in which dialing parity plans must be implemented if a plan has already been approved by a state commission. See, *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98. The FCC now requires that a LEC must implement dialing parity within 30 days after a state commission grants approval of their plan. Lincoln's initial cutover date was scheduled for a June 16, 1999; however, because of the FCC ruling, Lincoln is now required to cutover to equal access on May 16, 1999¹ rather than the proposed June 16, 1999. Such change is required to comply with the FCC's new deadlines while also complying with the Commissions' equal access rules.

¹ On April 13, 1999, the Montana Commission approved Lincoln's Amended Dialing Parity Plan with an April 16, 1999 effective date. The effective date was forwarded three

11. Following a review of Lincoln's Plan, the Commission makes the following findings and conclusions.

FINDINGS OF FACT AND COMMISSION DECISION

12. The Commission established its intraLATA equal access implementation rules "to provide guidelines and procedures for the commission to carry out its duties pursuant to the Federal Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996)."

ARM 38.5.4101, entitled "SCOPE AND PURPOSE OF RULES." Subsection (2) provides further indication of purpose in adopting the rules:

. . . The commission imposes this subchapter to encourage competitive entry, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers while ensuring that the rates charged and services rendered by telecommunications services providers are just and reasonable.

The rules were adopted after giving all interested parties the opportunity to comment and reflect a careful, reasoned consideration of all comments received, both in response to AT&T's original petition for the rulemaking and in response to later formal rulemaking inquiries. The rules were adopted specifically for implementing intraLATA equal access in Montana.

13. ARM 38.5.4120(1) states that LECs "shall file their toll dialing parity plans carrying out the intraLATA equal access presubscription implementation rules set forth in ARM 38.5.4101 through 38.5.4116." ARM 38.5.4120(1) also provides that interested parties who wish to comment on a LEC's toll dialing parity plan shall have a reasonable opportunity to do so.

days to allow Lincoln to issue customer notifications with the proper eligible IXC names appearing on the customer notification letter.

14. ARM 38.5.4120 provides that Lincoln's Plan must describe how ARM 38.5.4101 through 38.5.4116 will be carried out and include information addressing the following:

- (a) detailed information explaining how and when carriers will be notified of the implementation schedule;
- (b) the language to be used in, and the manner of distribution of, the customer notification letter;
- (c) a description of Lincoln's anticipated cost of implementation, including Lincoln's specific implementation costs, the vehicle that Lincoln intends to use to recover implementation costs, and the cost recovery time frame; and
- (d) a description of Lincoln's proposed business office practices and sample scripts that demonstrate how its business office personnel will handle customer-initiated business office contacts with Lincoln in its role as a local exchange provider in a competitively neutral manner following implementation.

15. This order does not define terms relating to dialing parity or equal access presubscription; these and other terms are defined in ARM 38.5.4102. We address the general subtopics of intraLATA equal access implementation with respect to Lincoln's Plan below:

A. Part II. Implementation Schedule

16. Lincoln will offer dialing parity for intraLATA toll in all of its exchanges by May 16, 1999, which coincides with Lincoln's carrier access billing cycle. On that date and required by ARM 38.5.4103(2), Lincoln will implement intraLATA equal access using the full "2-PIC" carrier selection methodology which allows an end user to select the same or different carriers for their intraLATA and interLATA toll calling. All residential, business and payphone customers will be offered intraLATA equal access.

B. Part III. Carrier Notification Procedures and Customer Lists

17. *Customer lists:* ARM 38.5.4105(2) requires a LEC or primary toll carrier to make available to all registered carriers that intend to offer equal access a complete list of the

primary toll carriers customer's by name, address and phone number within 45 days of receipt of a BFR. Lincoln has made available such list since January 25, 1999. ARM 38.5.4105 requires that Lincoln make such list available to registered IXC's for a period of 180 days following implementation of intraLATA equal access. Charges for such list shall be cost based and nondiscriminatory.

18. *Carrier notification:* ARM 38.5.4120(3) requires Lincoln to provide notice to all registered interexchange carriers no less than 120 days prior to the actual implementation date. The notice must include terms and conditions of participation, ordering procedures and the implementation schedule. All carriers wishing to participate in Lincoln's Plan must respond within 30 days. Lincoln will then respond to each responding interexchange carrier within three days.

19. On March 16, 1999, the Commission approved Lincoln's carrier notification procedures permitting Lincoln to notify registered interexchange carriers by means of a Commission-established electronic mailing list or "Listserv" in lieu of a First Class mailing. Further, the Commission also required Lincoln to mail its carrier participation form via first class mail to carriers who could not be contacted electronically.

20. *PIC change requests:* ARM 38.5.4116(1)(e) requires LECs to accept Letters of Authorization or Agency (LOAs) and customer requests within 60 days prior to implementation. However, because the recent FCC order changed the date which Lincoln must implement dialing parity, Lincoln could only start accepting LOAs on the date its Amended Plan was filed with the Commission, which was now outside the required 60 days prior to cutover. On April 13, 1999, the Commission waived the requirements of

ARM 38.5.4116(1)(e) and allowed Lincoln to begin accepting LOAs and customer requests beginning March 30, 1999.

21. Lincoln shall process LOAs that conform to ARM 38.5.3801 through ARM 38.5.3810, the emergency slamming rules adopted by the Commission in Docket No. L-99.1.1-RUL, and § 69-3-1304, MCA. In cases of multiple LOA submissions, Lincoln will process the last dated LOA.

C. Part IV: Customer Notifications, Education, and Safeguards

22. Customer notification is addressed in several of the Commission's rules. ARM 38.5.4120(1)(b) requires that Lincoln's Plan describe how notification to end users will be carried out, the language Lincoln will use in its customer notification letter and the manner in which the letter will be distributed.

23. Additionally, ARM 38.5.4105(4) requires all informational materials, forms and scripts to be "complete, clear and unbiased." It requires local exchange carriers to promptly make any changes required by the Commission before using them. *See* ARM 38.5.4105(4). Pursuant to ARM 38.5.4104 and at least 30 days prior to its scheduled cutover date, Lincoln must provide written information to its customers describing intraLATA dialing parity and explaining presubscription procedures. Information provided pursuant to ARM 38.5.4104 shall also inform customers with existing interLATA PIC freezes on their accounts that their freeze will extend to their existing intraLATA toll carriers until the end users take action to change. On April 13, 1999, the Commission approved Lincoln's Plan allowing Lincoln to inform its end users of intraLATA equal access 27 days rather than 30 days prior to cutover.

24. *Existing customer notification:* Lincoln will provide written notification to its customers describing intraLATA dialing parity and explaining presubscription procedures via direct mail prior to April 19, 1999. Lincoln attached as Exhibit A its proposed format to notify customers. Lincoln's customer notification letter must include language that informs customers that an existing interLATA PIC freeze will extend to their intraLATA PIC. Lincoln customer notification letter must also inform end users that action is required to change an intraLATA carrier. Further, Lincoln's customer notification letter must inform end users that if no action is taken their intraLATA calls will continue to be carried by their current intraLATA carrier.

25. *New customer notification:* All new customers who commence local service after the initial mailing to existing customers, but prior to the cutover date will be provided information from Lincoln about their carrier selection options at the time they sign up for local service. Customers who subscribe to local service after April 19, 1999, but prior to May 16, 1999, will also be provided a copy of the written notification prepared for existing subscribers.

26. The notification will advise these new subscribers that they may select both an interLATA and intraLATA carrier or be assigned "no-PIC" status if they do not choose a carrier(s). Lincoln will waive the initial intraLATA PIC selection charge for a period not less than 30 days following new service installation. The Commission finds this 30 day waiver to be in the public interest and consistent with past Commission decisions.

27. *Waiver period:* ARM 38.5.4111(1) states that "no charge shall be imposed for a customer's initial selection of a primary intraLATA carrier. Each LEC shall allow customers to change their selection of a primary intraLATA carrier one time only at no

charge within 90 days following implementation of intraLATA dialing parity in an exchange.”

28. Lincoln will allow its customers to select an intraLATA carrier once without charge within 93 days following the implementation of intraLATA equal access. Lincoln will extend the required 90 day waiver period three (3) days in order to compensate for the three (3) day shortened customer notification period.

29. *PIC charges:* ARM 38.5.4111 states that PIC change charges shall be “the same as those imposed for changing interLATA carriers.” Lincoln will not charge for a customer’s initial intraLATA PIC change within the 93 day waiver period. Subsequent intraLATA PIC changes shall be assessed a single PIC change charge. Simultaneous intraLATA and interLATA PIC changes will also be assessed a single PIC change charge pursuant to ARM 38.5.4111.

30. *Customer safeguards:* ARM 38.5.4116 requires that a LEC handle a customer request to change an intraLATA carrier in a competitively neutral manner (i.e., in the same manner as a PIC change from one competitor to another). Past Commission orders require LECs, on request, to process customer changes of their intraLATA and/or interLATA carriers. Lincoln is required to process all PIC change requests from an end user in a competitively neutral manner pursuant to ARM 38.5.4116.

31. *Handling customer contacts/Business office practices:* ARM 38.5.4116 provides for safeguards to ensure that the development of intraLATA competition will not be impeded by LEC practices following equal access presubscription. Subsection (1)(a) requires Lincoln’s customer informational materials and procedures used to provide new

customers information about their carrier selection options when they sign up for service be competitively neutral and approved by the Commission prior to their use.

32. Lincoln's representatives will inform new local exchange end users of their right to select the intraLATA carrier of their choice and, if they make no choice, they will be required to dial carrier access codes to place these calls. Both new and existing customers may communicate their choice of carriers directly to Lincoln through Lincoln's local business office or they may do so indirectly through selected carriers.

33. For all customer-initiated contacts regarding local service matters, ARM 38.5.4116(1)(b) includes important safeguards. It provides, "When handling customer-initiated contacts regarding local service matters such as a change in service, business office personnel may not engage in promotional efforts for the local exchange carrier's toll service offerings." Subsection (1)(c) further provides that when a customer contacts a LEC's business office to change the PIC from the LEC to a competitor, "the transaction must be handled in a neutral manner (i.e., in the same manner as a PIC change from one competitor to another)."

34. Lincoln will handle all customer-initiated contacts for PIC changes in a neutral manner. Many of the Commission's previously expressed concerns about contact handling by local exchange carriers who provide intraLATA toll service do not apply to Lincoln because Lincoln does not provide intraLATA toll service to its customers.

35. Lincoln is required to provide a list of all of the eligible, participating interexchange carriers providing service in its area. The list shall be randomly scrambled at least once per month.

36. ARM 38.5.4105(4) requires Lincoln to provide proposed business office scripts to the Commission for review as part of its implementation Plan. The rule requires that the scripts be filed so they can be reviewed by the Commission prior to approval or modification of the Plan. Lincoln is required to submit the scripts its customer service representatives will refer to and will be trained to use to discuss intraLATA dialing parity for new service requests and customer contacts for changes in service other than “general service” contacts.

37. Lincoln submitted the following script:

You may choose the long distance company you would like to handle your intraLATA long distance calls. (Explain LATA boundaries if necessary). If you do not wish to make a selection at this time, you will have to dial a specific company’s access code in order to make an intraLATA long distance call. LTC has a list of long distance companies offering intraLATA long distance in pour service territory. If you would like, I can read that list to you.

Lincoln’s script is sufficient to advise customers of their choices for intraLATA carriers and is competitively neutral as required by Commission rule.

38. The Commission recognizes that a script will not be appropriate for all calls. Some contacts may require Lincoln’s representatives to adapt their conversation based on individual circumstances. The script provides the necessary information, however, and as long as the representative conveys the information included in the script, such deviations are acceptable.

39. The Commission has imposed marketing restrictions for local exchange carriers who provide intraLATA toll. However, since Lincoln does not provide toll service, many of the Commission imposed marketing restrictions do not apply to Lincoln at this time. However, as in past decisions, the Commission concludes that it is reasonable to prohibit

Lincoln from initiating marketing and promotional activities for any carriers intraLATA toll services on contacts for new service, transfers of service and number changes.

D. Part V: Costs Recovery

40. ARM 38.5.4120 requires Lincoln to describe the anticipated cost of implementation, including its specific intraLATA presubscription costs, the vehicle that it intends to use to recover them, and the time frame for recovery. Lincoln states it incurred incremental costs to implement intraLATA dialing parity. Major cost categories cited by Lincoln include: (1) Network hardware upgrades to provide full 2-PIC methodology in all exchanges, (2) Central office software upgrades necessary for intraLATA presubscription, (3) Software translations, (4) Billing systems testing and table modifications, (5) Training for business office, marketing, carrier services, customer services and service center personnel, (6) Customer notification (bill messages) and, (7) Implementation activity, including consulting and regulatory costs. All these costs are recoverable pursuant to ARM 38.5.4115.

41. Lincoln did not submit cost support data defining the incremental costs associated with implementing intraLATA equal access. However, Lincoln states that it will notify the Commission if and when it seeks to recover these costs.

42. As with past decisions, the Commission will not require Lincoln to provide a cost analysis and is satisfied with Lincoln's proposal. The public interest is best served by waiving the requirement for cost information for Lincoln. If Lincoln incurs substantial unanticipated costs to implement dialing parity and files additional materials to support a surcharge, the Commission will address cost recovery at that time.

CONCLUSIONS OF LAW

1. The Commission has authority to supervise, regulate and control public utilities. Section 69-3-102, MCA. Lincoln is a public utility offering regulated telecommunications services in the State of Montana. Section 69-3-101, MCA.

2. The Commission has authority to do all things necessary and convenient in the exercise of the powers granted to it by the Montana Legislature and to regulate the mode and manner of all investigations and hearings of public utilities and other parties before it. Section 69-3-103, MCA.

3. The Montana Public Service Commission is the state agency charged with regulating telecommunications carriers in Montana and properly exercises jurisdiction in this Docket pursuant to Title 69, Chapter 3, MCA.

4. Adequate public notice and an opportunity to be heard has been provided to all interested parties in this Docket, as required by the Montana Administrative Procedure Act, Title 2, Chapter 4, MCA.

ORDER

THEREFORE, based on the foregoing, IT IS ORDERED that Lincoln's intraLATA dialing parity implementation Plan is approved as discussed herein.

DONE AND DATED this 6th day of April, 1999, by a vote of 5-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman

NANCY MCCAFFREE, Vice Chair

BOB ANDERSON, Commissioner

GARY FELAND, Commissioner

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.